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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Cable ) MM Docket No. 92-260  
Television Consumer Protection )  
and Competition Act of 1992 )

REPLY COMMENTS OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits these Reply Comments in response to the comments filed on December 1, 1992 in the above-captioned proceeding. The comments were filed in response to a Notice of Proposed Rule Making, ("NPRM"), FCC 92-500, released by the Commission on November 6, 1992. In that NPRM, the Commission seeks comments on how it should fashion cable home wiring rules required by the Cable Television Consumer Protection and Competition Act of 1992 ("Act").<sup>1</sup>

NTCA is a national association of approximately 480 small and rural local exchange carriers ("LECs") providing telecommunications services to IXC's and subscribers across rural America. Approximately 150 of NTCA's members operate cable television systems in their telephone service area. Most of them provide service under the rural exemption in 47 C.F.R. § 63.58.

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<sup>1</sup> Pub. L. No. 102-385, § 16(d), 102 Stat. \_\_\_\_ (1992).

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## DISCUSSION

### I. THE COMMISSION SHOULD PROVIDE FOR SUBSCRIBER OWNERSHIP OF CABLE WIRING UPON TERMINATION OF SERVICE.

NTCA has reviewed the initial comments filed in this proceeding and agrees with commentors advocating that the Commission apply to cable operators the same rules that already apply to telephone company inside wiring. The Commission and commentors correctly point out that the legislative history of the Act expresses a congressional intent to "permit ownership of the cable wiring by the homeowner" and to put in place policies that "protect consumers against the imposition of unnecessary charges, for example, for home wiring maintenance." <sup>2</sup>

The legislative history also indicates that Congress was aware that subscribers bear additional costs and inconveniences in instances where cable operators remove inside wire after termination of service without giving the subscriber an opportunity to acquire the wiring.<sup>3</sup> The United States Telephone Association ("USTA") has commented that consumer ownership of cable home wiring will avoid these additional costs, wasted work and disruption of replacing wiring when cable service is terminated. In addition, USTA points out that consumer ownership will permit consumers to use their existing cable home wiring to receive competing services and will promote competition for wire

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<sup>2</sup> S. Rep. No. 92, 102d Cong., 1st Sess., at 23 (June 28, 1991).

<sup>3</sup> Id.

maintenance.<sup>4</sup> NTCA agrees with USTA's position that consumer ownership will promote competition for services that can be provided by others, including telephone companies. However, with respect to competition for the maintenance of cable home wiring, NTCA supports this concept but believes that the Commission should account for the differences in competition for maintenance services in areas served by small systems and that it should not discourage small systems like NTCA's members operating under the rural exemption from providing maintenance services or from completely recovering the costs of providing those services which cable consumers demand.

Further while NTCA supports consumer ownership upon termination of service, it agrees with Bell Atlantic's position that like telephone companies,<sup>5</sup> upon termination of service, cable operators should be allowed to amortize any part of the cost of existing wiring that they can show is undepreciated and unrecovered.

II. THE COMMISSION SHOULD NOT IMPOSE INCONSISTENT OBLIGATIONS ON PROVIDERS IF IT PROMULGATES A RULE PROVIDING FOR SUBSCRIBER OWNERSHIP UPON INSTALLATION.

USTA, Bell Atlantic, the NYNEX Telephone Companies, Pacific Bell, and Nevada Bell, and Tele-Communications, Inc. ("TCI")<sup>6</sup>

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<sup>4</sup> USTA Comments at 5. All references to parties' comments are to those filed in this docket on December 1, 1992.

<sup>5</sup> See, Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Second Report and Order at 2, 51 Fed. Reg. 8498 (March 12, 1986).

<sup>6</sup> USTA at 6; Bell Atlantic at 5; NYNEX at 4; Pacific Bell at 2-3; and TCI at 2.

variously argue that the Commission should not limit its rule in this proceeding to ownership upon termination of service but should also provide for customer ownership and/or control of existing and newly installed home wiring.<sup>7</sup> NTCA agrees with these parties' statements that customers should be able to choose among video providers and that the customer's control of cable home wiring installed in the future will likely speed the deployment of broadband services such as video dial tone and other competing services at a lower cost to the customer. However, NTCA also urges the Commission to assure that its rules in this proceeding are coordinated with any rate regulations it adopts pursuant to Section 3 of the Act so that small systems are not precluded from fully recovering a reasonable return as well as the costs of materials and labor for newly installed wire.<sup>8</sup>

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<sup>7</sup> Section 16(d) of the Act which this NPRM implements does not address ownership upon installation or the Commission's duty to promulgate regulations in that regard. It states: "Within 120 days after the date of enactment of this subsection, the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." The House Report, H. Rep. 628, 102d Cong., 2d Sess., at 118-119 (June 29, 1992) states: "This section [referring to the home wiring provision] does not address matters concerning the cable facilities inside the subscribers's home prior to termination of service. In this regard, the Committee does not intend that cable operators be treated as common carriers with respect to internal cabling installed in subscribers' homes."

<sup>8</sup> Bell Atlantic states that cable operators should be allowed to expense the cost of wiring they install. Bell Comments at 5. TCI is also in favor of allowing operators to fully expense installation costs in the year of installation and believes the Commission should address changes in the rate regulation proceeding.

These small systems with 1,000 or fewer subscribers will be subject to rate regulation but the Commission is required under Section 3(i) to "reduce the administrative burdens and cost of compliance. . . ."

Further, the Commission should not impose inconsistent obligations on these small systems. The Commission recognizes this danger with respect to its obligation to regulate signal leakage and seeks comments on the implications of this additional issue. NPRM at ¶ 6. NTCA urges the Commission to refrain from adopting rules that acknowledge the legal responsibility of operators to prevent leakage but deny them the ability to meaningfully fulfill their obligations either because they have no ownership rights or contractual obligations that give them control over or allow access to installed wire.<sup>9</sup> Further operators should have the right to terminate service to prevent leakage that interferes with the public health or safety. Operators should not be required to continue service over wire that is improperly manufactured, installed or maintained.

#### CONCLUSION

For the above stated reasons, NTCA urges the Commission to adopt cable home wiring rules that provide for consumer ownership

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<sup>9</sup> H.R. 628, 102d Cong., 2d Sess. at 119 (June 29, 1992) states: "Cable operators continue to have legal responsibility to prevent signal leakages since improper installation or maintenance could threaten safety that operate on critical frequencies. Nothing in this section should be construed to create any right of a subscriber to inside wiring that would frustrate the cable operators' ability to prevent or protect against signal leakage during the period the cable operator is providing service to such provider."

of wiring upon termination of service and allow for the recovery of undepreciated and unrecovered costs. In addition, if the Commission adopts rules providing for consumer ownership of newly installed or existing home wiring, it should assure that its rules allow small systems to recover the costs of materials and labor and a reasonable return. NTCA also urges the Commission to adopt rules which reduce administrative burdens on small systems and which do not subject these systems to inconsistent obligations.

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